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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 ERIC L. DALE,

Case No. 3:20-cv-00031-MMD-CLB

7 Petitioner,

ORDER

8 v.

9 BRIAN E. WILLIAMS, *et al.*,10 Respondents.
11

12 This action began with a petition for a writ of habeas corpus filed pursuant to 28
13 U.S.C. § 2254 by Nevada state prisoner Eric L. Dale. On April 7, 2020, the Court granted
14 Petitioner's motion for counsel and appointed the Federal Public Defender to represent
15 Petitioner in this action (ECF No. 3). On May 7, 2020, Kimberly Sandberg of the Federal
16 Public Defender's Office appeared on behalf of Petitioner (ECF No. 7). The Court now
17 sets a schedule for further proceedings in this action.

18 It is therefore ordered that counsel for Petitioner meet with Petitioner as soon as
19 reasonably possible, if counsel has not already done so, to: (a) review the procedures
20 applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with Petitioner, as
21 fully as possible, the potential grounds for habeas corpus relief in petitioner's case; and
22 (c) advise petitioner that all possible grounds for habeas corpus relief must be raised at
23 this time—in this action—and that the failure to do so will likely result in any omitted
24 grounds being barred from future review.

25 It is further ordered that Petitioner has 90 days from the date of this order to file
26 and serve on Respondents an amended petition for writ of habeas corpus that includes
27 all known grounds for relief (both exhausted and unexhausted).

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1 It is further ordered that Respondents have 45 days after service of an amended
2 petition within which to answer, or otherwise respond to, the amended petition. If
3 Petitioner does not file an amended petition, Respondents have 45 days from the date on
4 which the amended petition is due within which to answer, or otherwise respond to,
5 Petitioner's original petition. Any response filed should comply with the remaining
6 provisions below, which are entered pursuant to Habeas Rule 5.

7 It is further ordered that any procedural defenses raised by Respondents in this
8 case be raised together in a single consolidated motion to dismiss. In other words, the
9 court does not wish to address any procedural defenses raised herein either in seriatum
10 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural
11 defenses omitted from such motion to dismiss will be subject to potential waiver.
12 Respondents should not file a response in this case that consolidates their procedural
13 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. §
14 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek
15 dismissal of unexhausted claims under § 2254(b)(2): (a) they should do so within the
16 single motion to dismiss not in the answer; and (b) they should specifically direct their
17 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
18 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including
19 exhaustion, should be included with the merits in an answer. All procedural defenses,
20 including exhaustion, instead must be raised by motion to dismiss.

21 It is further ordered that, in any answer filed on the merits, Respondents must
22 specifically cite to and address the applicable state court written decision and state court
23 record materials, if any, regarding each claim within the response as to that claim.

24 It is further ordered that, if and when Respondents file an answer or other
25 responsive pleading, Petitioner will have 30 days after service of the answer or responsive
26 pleading to file and serve his response.

27 It is further ordered that any additional state court record exhibits filed herein by
28 either Petitioner or Respondents be filed with a separate index of exhibits identifying the

1 exhibits by number. The CM/ECF attachments that are filed also must be identified by the
2 number or numbers of the exhibits in the attachment.

3 It is further ordered that, at this time, the parties must send courtesy copies of any
4 responsive pleading and all indices of exhibits only to the Reno Division of this Court.
5 Courtesy copies must be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV,
6 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing
7 address label. No further courtesy copies are required unless and until requested by the
8 Court.

9 DATED THIS 8th day of May 2020.

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12 MIRANDA M. DU, CHIEF JUDGE
13 UNITED STATES DISTRICT COURT
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